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IN THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA, CIVIL DIVISION

0706281

ELIZABETH BERNARDEZ,
AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF WILLIAM
BERNARDEZ,
Plaintiff

Civil Case No.

vs.

MICHELIN NORTH AMERICA, INC.
f/k/a UNIROYAL TIRE COMPANY, INC.
or UNIROYAL GOODRICH TIRE COMPANY,
INC., GENERAL MOTORS CORPORATION,
MULLINAX FORD SOUTH, INC. d/b/a MAROONE
FORD OF MARGATE, SEARS, ROEBUCK &
CO. d/b/a SEARS AUTO CENTER, and ABC
CORPORATION
Defendants

MAR 21 2007

A TRUE COPY

HOWARD C. PERIN,
CLERK OF COURT

14

COMPLAINT

COMES NOW THE PLAINTIFF, ELIZABETH BERNARDEZ, PERSONAL
REPRESENTATIVE OF THE ESTATE OF WILLIAM BERNARDEZ and files this
Complaint against the Defendants, MICHELIN NORTH AMERICA, INC f/k/a
UNIROYAL TIRE COMPANY, INC or UNIROYAL GOODRICH TIRE COMPANY,
INC, GENERAL MOTORS CORPORATION, MULLINAX FORD SOUTH, INC d/b/a
MAROONE FORD OF MARGATE, SEARS, ROEBUCK & CO d/b/a/ SEARS AUTO
CENTER AND ABC CORPORATION

JURISDICTION AND VENUE

- 1 This is a wrongful death action for damages in excess of the jurisdictional limits of this Court. Venue and jurisdiction properly lie in this Court as a Defendant resides and operates a business in Broward County, Florida

PARTIES

- 2 The Plaintiff, ELIZABETH BERNARDEZ, is a Lee County resident, over the age of twenty-one and otherwise competent to bring and maintain this action. A

lawsuit making these allegations was filed by this Plaintiff in Lee County, Twentieth Judicial Circuit but venue pursuant to Fla Stat Sec 47011 is proper in this County where the Defendant resides and conducts business, including the sale of the subject vehicle to Plaintiff

3. WILLIAM BERNARDEZ died on March 21, 2005 in a single vehicle roll over collision caused when the left rear tire of his 1999 Chevrolet Blazer (Vehicle Identification number 1GNCS18W1XK191407 and hereafter, "the Chevrolet Blazer") failed
4. The subject collision occurred on Interstate 75 near State Road 43 in Bradenton, Manatee County, Florida
5. ELIZABETH BERNARDEZ is the surviving spouse and Personal Representative of the ESTATE OF WILLIAM BERNARDEZ for the purposes of this action brought under Florida's Wrongful Death Act. A copy of the Letters of Administration issued are attached as Exhibit 1 to this Complaint
6. At all material times, ELIZABETH AND WILLIAM BERNARDEZ were husband and wife and residents of Lee County, Florida. ELIZABETH BERNARDEZ remains a resident of Lee County, Florida
7. THE ESTATE OF WILLIAM BERNARDEZ is filed in Lee County where the letters of administration attached as Exhibit 1 were issued
8. At all material times, the Defendant, MICHELIN NORTH AMERICA, INC f/k/a UNIROYAL TIRE COMPANY, INC or UNIROYAL GOODRICH TIRE COMPANY, INC, including its agents and subsidiaries (hereafter, UNIROYAL) was a foreign corporation authorized to do and doing business in the State of

Florida, including but not limited to the designing, engineering, manufacturing, fabricating, assembling, distributing, testing, marketing and selling of tires

- 9 At all material times, the Defendant, SEARS, ROEBUCK & CO d/b/a SEARS AUTO CENTER, including its agents and subsidiaries (hereafter SEARS), was a foreign corporation authorized to do and doing business in the State of Florida, including but not limited to holding themselves out to the public as expert in tire service, repair, and/or re-sale at their place of business at 1625 N W 107th Avenue, Miami, Florida
- 10 At all material times, the Defendant, GENERAL MOTORS CORPORATION, including its agents and subsidiaries (hereafter GENERAL MOTORS), was a foreign corporation authorized to do and doing business in the State of Florida, including but not limited to the designing, engineering, manufacturing, fabricating, assembling, distributing, testing, marketing and selling of motor vehicles
- 11 The Defendant ABC CORPORATION, including its agents and subsidiaries, is a fictitious name of a company doing business in Florida responsible for designing, engineering, manufacturing, fabricating, assembling, distributing, testing, marketing and selling, installation or repair of the subject vehicle and/or tire. Upon reasonable investigation, Plaintiff has been unable to identify points of service or sale of the subject vehicle and/or tire and will amend this Complaint upon identification of any additional responsible and proper parties to relate back to the filing of this Complaint
- 12 The Uniroyal Laredo All -Season AWP P235/70R15 passenger tire (hereafter, the subject tire) was manufactured by Defendant UNIROYAL and installed as a

'spare' tire and original equipment on the Chevrolet Blazer by the Defendant
GENERAL MOTORS.

- 13 The Chevrolet Blazer with the subject tire were delivered to the agent and dealer, ABC CORPORATION and/or MULLINAX FORD SOUTH, INC d/b/a MAROONE FORD OF MARGATE (hereafter MULLINAX) before being placed into the stream of commerce in the usual and ordinary course of business
- 13 In the course of its regular and customary business, MULLINAX sold the Chevrolet Blazer to the Plaintiff at their dealership located at 5300 West Copans Road, Margate, Broward County, Florida
- 14 The Defendant SEARS was, at all material times, responsible for the sale, service, repair and/or maintenance of the subject vehicle and its tires, including but not limited to the subject tire
- 15 MULLINAX and/or ABC CORPORATION are and were, at all material times, Florida corporations authorized to do business in this State
- 16 MULLINAX and/or ABC CORPORATION are in the principal business of buying, selling and leasing new and used motor vehicles.
- 17 The subject automobile and tire were commonly advertised, sold, used and consumed in the State of Florida, including Broward County, in the ordinary course of commerce, trade or use within the meaning of Fla Stat Sec 48 193
- 18 At all times material hereto, each of the Defendants operated, conducted, engaged and/or carried on a business venture in the State of Florida or had an office or agency in the State of Florida within the meaning of Fla Stat Sec 48 193

COUNT I

**UNIROYAL
NEGLIGENCE**

- 19 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 - 18 as if fully set forth here
- 20 Defendant UNIROYAL designed, engineered, tested, manufactured, marked and distributed the subject tire and placed it into commerce
- 21 The subject tire was designed, engineered, tested and/or manufactured in a negligent manner
- 22 Defendant UNIROYAL knew or should have known that the subject tire was designed, engineered, tested and/or manufactured in a negligent manner
- 23 Defendant UNIROYAL was negligent and acted in a willful and wanton manner in designing, engineering, testing, manufacturing, inspecting, marketing and selling the subject tire
- 24 Defendant UNIROYAL was in a superior position to know of the tire's defects or is liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended
- 25 The subject tire was expected to and did reach the user, Plaintiff, without substantial change in the condition in which it was originally manufactured, distributed, assembled, and installed by UNIROYAL. The subject tire was unreasonably dangerous to its users, consumers, the general public and in particular to the Plaintiff decedent for its intended uses in that over time the subject tire experienced separation of tread from steel belt even without use

26 Defendant UNIROYAL is also negligent in failing to warn the users of this tire and others who might come into contact with the tire of the dangers involved in this negligently designed and manufactured tire

27 Had Defendant not acted as described above, the subject tire would not have been placed on the Chevrolet Blazer in the manner that it was and would not have been a contributing cause of the collision

28 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

29 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

30 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

31 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,

(c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant UNIROYAL including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT II

**UNIROYAL
STRICT LIABILITY**

- 32 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 ~ 18 as if fully set forth here
- 33 Defendant UNIROYAL designed, engineered, tested, manufactured, marked and distributed the subject tire and placed it into commerce
- 34 The subject tire was designed, engineered, tested and/or manufactured in a defective manner
- 35 Defendant UNIROYAL knew or should have known that the subject tire was designed, engineered, tested and/or manufactured in a negligent and defective manner
- 36 Defendant UNIROYAL was in a superior position to know of the tire's defects or is strictly liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended

- 37 Defendant UNIROYAL acted in a willful and wanton manner in designing, engineering, testing, manufacturing, inspecting, marketing and selling the subject tire
- 38 Defendant UNIROYAL is strictly liable to Plaintiff for the injuries and losses described herein because the subject tire was not merchantable and was not reasonably suited for the use intended
- 39 The subject tire was expected to and did reach the user, Plaintiff, without substantial change in the condition in which it was originally manufactured, distributed, assembled, and installed by UNIROYAL. The subject tire was in a defective condition which was unreasonably dangerous to its users, consumers, the general public and in particular to the Plaintiff decedent for its intended uses in that over time the subject tire experienced separation of tread from steel belt even without use
- 40 Defendant UNIROYAL is also negligent in failing to warn the users of this tire and others who might come into contact with the tire of the dangers involved in this defectively designed and manufactured tire
- 41 Had Defendant not acted as described above, the subject tire would not have been placed on the Chevrolet Blazer and would not have been a contributing cause of the collision
- 42 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision
- 43 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

44 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

45 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant UNIROYAL including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT III

**GENERAL MOTORS
NEGLIGENCE**

46 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here

47 Defendant GENERAL MOTORS designed, engineered, tested, manufactured, marked and distributed the Chevrolet Blazer and placed it into commerce

48 The Chevrolet Blazer was designed, engineered, tested and manufactured in a negligent manner

49 The Chevrolet Blazer was expected to and did reach the user, Plaintiff, without substantial change in the condition in which it was originally manufactured, distributed, assembled, and installed by GENERAL MOTORS. The subject vehicle was unreasonably dangerous to its users, consumers, the general public and in particular to the Plaintiff decedent for its intended uses as described below

50 Defendant GENERAL MOTORS was negligent and acted in a willful and wanton manner in designing, engineering, testing, manufacturing, inspecting, marketing and selling the Chevrolet Blazer including but not limited to the following

(A) The Chevrolet Blazer's handling and stability were designed with a high center of gravity, relatively narrow track width and short wheelbase, all of which contribute to poor handling qualities during the accident avoidance maneuver,

(B) The Chevrolet Blazer was not equipped with reasonable and adequate protection for roll over type crashes, in that the combination of the safety belt system and the vehicle's roof failed to provide an adequate survival space thus allowing intrusion,

(C) The Chevrolet Blazer was marketed in a negligent and misleading fashion designed to create a false sense of safety and security for owners and occupants of the subject vehicle,

(D) The Chevrolet Blazer was susceptible to rolling over on flat level surfaces due to subject tire insufficiencies and friction forces, and

(E) Failed to provide written and verbal warnings to the Plaintiff and decedent and failed to affix written warnings pertaining to the instability

of the subject vehicle and the lack of structural integrity of the passenger compartment

(F) Failed to warn that space or unused tires over time experience separation of tread from belt

- 51 Defendant GENERAL MOTORS was in a superior position to know of the subject vehicle and tire's negligent design or manufacture and is liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended
- 52 Defendant GENERAL MOTORS is also negligent in failing to warn the users of this vehicle and others who might come into contact with the Chevrolet Blazer of the dangers involved in this negligently designed and manufactured vehicle
- 53 Had Defendant not acted as described above, the Chevrolet Blazer and would not have been a contributing cause of the collision
- 54 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision
55. The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act
- 56 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following
 - (a) Lost earnings, wages and salary,
 - (b) Lost net accumulations,
 - (c) Lost bonuses, benefits and other valuable financial consideration,
 - (d) Medical expenses, and,

(e) Funeral expenses

57 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant GENERAL MOTORS including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT IV

**GENERAL MOTORS
STRICT LIABILITY**

- 58 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here
- 59 Defendant GENERAL MOTORS designed, engineered, tested, manufactured, marked and distributed the Chevrolet Blazer and placed it into commerce
- 60 The Chevrolet Blazer was designed, engineered, tested and manufactured in a defective manner.
- 61 The Chevrolet Blazer was expected to and did reach the user, Plaintiff, without substantial change in the condition in which it was originally manufactured, distributed, assembled, and installed by GENERAL MOTORS The subject

vehicle was in a defective condition which was unreasonably dangerous to its users, consumers, the general public and in particular to the Plaintiff decedent for its intended uses as described below

62 Defendant GENERAL MOTORS acted in a willful and wanton manner in designing, engineering, testing, manufacturing, inspecting, marketing and selling the Chevrolet Blazer including but not limited to the following

(A) The Chevrolet Blazer's handling and stability were designed with a high center of gravity, relatively narrow track width and short wheelbase, all of which contribute to poor handling qualities during the accident avoidance maneuver,

(B) The Chevrolet Blazer was not equipped with reasonable and adequate protection for roll over type crashes, in that the combination of the safety belt system and the vehicle's roof failed to provide an adequate survival space thus allowing intrusion,

(C) The Chevrolet Blazer was marketed in a negligent and misleading fashion designed to create a false sense of safety and security for owners and occupants of the subject vehicle,

(D) The Chevrolet Blazer was susceptible to rolling over on flat level surfaces due to subject tire insufficiencies and friction forces, and

(E) Failed to provide written and verbal warnings to the Plaintiff and decedent and failed to affix written warnings pertaining to the instability of the subject vehicle and the lack of structural integrity of the passenger compartment

(F) Failed to warn that space or unused tires over time experience separation of tread from belt

63 Defendant GENERAL MOTORS was in a superior position to know of the subject vehicle and tire's negligent design or manufacture and is strictly liable to Plaintiff

for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended

64 Defendant GENERAL MOTORS is strictly liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended

65 Defendant GENERAL MOTORS is also negligent in failing to warn the users of this vehicle and others who might come into contact with the Chevrolet Blazer of the dangers involved in this defective and negligently designed and manufactured vehicle

66 Had Defendant not acted as described above, the Chevrolet Blazer and would not have been a contributing cause of the collision

67 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

68. The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

69 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

70 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant GENERAL MOTORS including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT V

SEARS
NEGLIGENCE

- 71 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here
- 72 The subject tire was sold, repaired, serviced and/or installed on the Chevrolet Blazer by Defendant SEARS
- 73 Defendant SEARS was in a superior position to know of the subject tire's negligent design or manufacture and is liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended
- 74 Defendant SEARS was negligent in the sale, service, repair or installation of the subject tire and failing to warn the users of this tire and others who might come

into contact with the Chevrolet Blazer or the subject tire of the dangers involved in this negligently or defectively designed and manufactured vehicle and tire

75 Defendant SEARS is strictly liable to Plaintiff for the injuries and losses described herein because the subject tire was not merchantable and was not reasonably suited for the use intended

76 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

77 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

78 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

79 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant SEARS including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT VI

SEARS
STRICT LIABILITY

- 80 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here
- 81 The subject tire was sold, repaired, serviced and/or installed on the Chevrolet Blazer by Defendant SEARS
- 82 Defendant SEARS was in a superior position to know of the subject tire's negligent design or manufacture and is strictly liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended
- 83 Defendant SEARS is strictly liable for the sale, service, repair or installation of the subject tire and failing to warn the users of this tire and others who might come into contact with the Chevrolet Blazer or the subject tire of the dangers involved in this defective and negligently designed and manufactured vehicle and tire
- 84 Defendant SEARS is strictly liable to Plaintiff for the injuries and losses described herein because the subject tire was not merchantable and was not reasonably suited for the use intended

85 Had Defendants not acted as described above, the subject tire would not have been placed on the Chevrolet Blazer in the manner that it was and would not have been a contributing cause of the collision

86 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

87 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

88 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses; and,
- (e) Funeral expenses

89 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant SEARS including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate.

COUNT VII

MULLINAX
NEGLIGENCE

- 90 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here
- 91 The subject tire and Chevrolet Blazer were inspected, prepared, installed, manufactured, sold, delivered and/or repaired by Defendant MULLINAX to or for Plaintiff in the course of MULLINAX'S regular and customary business
- 92 Defendant MULLINAX was in a superior position to know of the subject tire's negligent design or manufacture and is liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended
- 93 Defendant MULLINAX is also negligent in failing to warn the users of this vehicle and others who might come into contact with the Chevrolet Blazer of the dangers involved in this defectively or negligently designed and manufactured vehicle
- 94 Defendant MULLINAX was negligent in the sale, service, repair, installation or delivery of the Chevrolet Blazer and subject tire, including but not limited to failing to warn the users of this vehicle and/or tire and others who might come into

contact with the Chevrolet Blazer of the dangers involved in this defective and negligently designed and manufactured vehicle and tire

95 Had Defendant not acted as described above, the Chevrolet Blazer would not have been sold or the subject tire would not have been placed on the Chevrolet Blazer in the manner that it was and would not have been a contributing cause of the collision

96 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

97 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

98 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

99 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,

(c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant MULLINAX including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT VII

**MULLINAX
STRICT LIABILITY**

- 100 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here
- 101 The subject tire and Chevrolet Blazer were inspected, prepared, installed, manufactured, sold, delivered and/or repaired by Defendant MULLINAX to or for Plaintiff in the course of MULLINAX'S regular and customary business
- 102 Defendant MULLINAX was in a superior position to know of the subject vehicle and tire's defects or is strictly liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended
- 103 Defendant MULLINAX is also negligent in failing to warn the users of this vehicle and others who might come into contact with the Chevrolet Blazer of the dangers involved in this defective and negligently designed and manufactured vehicle

104 Defendant MULLINAX was negligent and/or is strictly liable for the sale, service, repair, installation or delivery of the Chevrolet Blazer and subject tire, including but not limited to failing to warn the users of this vehicle and/or tire and others who might come into contact with the Chevrolet Blazer of the dangers involved in this defective and negligently designed and manufactured vehicle and tire

105 Had Defendant not acted as described above, the Chevrolet Blazer would not have been sold or the subject tire would not have been placed on the Chevrolet Blazer in the manner that it was and would not have been a contributing cause of the collision

106 As a direct and proximate result of Defendants' negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

107 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

108 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

109 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant MULLINAX including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT IX

**ABC CORPORATION
NEGLIGENCE**

110 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here

111 The Chevrolet Blazer and/or the subject tire was sold, repaired, serviced and/or installed by Defendant ABC CORPORATION

112 Defendant ABC CORPORATION was in a superior position to know of the subject tire's negligent design or manufacture and is liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended

113 Defendant ABC CORPORATION was negligent in the sale, service, repair or installation of the Chevrolet Blazer and/or the subject tire and failing to warn the

users of this tire and others who might come into contact with the Chevrolet Blazer of the dangers involved in this negligently or defectively designed and manufactured vehicle and tire

114 Had Defendant not acted as described above, the Chevrolet Blazer and/or the subject tire would not have been placed into the stream of commerce as they were and would not have been a contributing cause of the collision

115 As a direct and proximate result of Defendant's negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

116 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

117 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

118 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,

(c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant ABC CORPORATION including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT X

**ABC CORPORATION
STRICT LIABILITY**

- 119 Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 -- 18 as if fully set forth here
- 120 The Chevrolet Blazer and/or the subject tire was sold, repaired, serviced and/or installed by Defendant ABC CORPORATION
- 121 Defendant ABC CORPORATION is strictly liable for the sale, service, repair or installation of the Chevrolet Blazer and/or the subject tire and failing to warn the users of this tire and others who might come into contact with the Chevrolet Blazer of the dangers involved in this defective or negligently designed and manufactured vehicle and tire
- 122 Defendant ABC CORPORATION was in a superior position to know of the subject tire's negligent design or manufacture and is strictly liable to Plaintiff for the injuries and losses described herein because the Chevrolet Blazer was not merchantable and was not reasonably suited for the use intended

123 Had Defendant not acted as described above, the Chevrolet Blazer and/or the subject tire would not have been placed into the stream of commerce as they were and would not have been a contributing cause of the collision

124 As a direct and proximate result of Defendant's negligence, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

125 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

126 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

127 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendant

ABC CORPORATION including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

COUNT XI
ALL DEFENDANTS
BREACH OF WARRANTY

- 128 The Plaintiff re-alleges and incorporates each and every allegation contained in Paragraphs 1 – 18 as if fully set forth here
- 129 The Defendants, in connection with their business activities warranted, expressly and/or impliedly, that the subject vehicle and tire were fit, capable and proper for the uses and purposes for which they were intended and that they were of merchantable quality
- 130 Plaintiff and Plaintiff's decedent relied upon the skill and judgment of the Defendants and their representations and warranties in connection with the use of the subject vehicle and tire
- 131 The subject representations and warranties were false, misleading and inaccurate in that the subject vehicle and tire, when put to the test of actual use, was and proved to be unsound and unsuitable for the purpose for which it was intended and utilized and was otherwise unsafe, dangerous, improper and not of merchantable quality
- 132 The Defendants breached their duties of express or implied warranties
- 133 As a direct and proximate result of this breach, WILLIAM BERNARDEZ died as a result of injuries sustained in the subject collision

134 The Plaintiff is entitled to an award of damages under Florida's Wrongful Death Act

135 As a direct result of the death of WILLIAM BERNARDEZ, THE ESTATE OF WILLIAM BERNARDEZ has suffered loss, damage and injury including but not limited to the following

- (a) Lost earnings, wages and salary,
- (b) Lost net accumulations,
- (c) Lost bonuses, benefits and other valuable financial consideration,
- (d) Medical expenses, and,
- (e) Funeral expenses

136 As a direct result of the death of WILLIAM BERNARDEZ, ELIZABETH BERNARDEZ has suffered loss, damage and injuries, which are permanent and continuing in nature, including but not limited to the following

- (a) Mental and emotional pain and suffering,
- (b) Lost consortium, comfort and companionship, and,
- (c) Lost capacity for the enjoyment of life

WHEREFORE, the Plaintiff, ELIZABETH BERNARDEZ, as Personal Representative of the ESTATE OF WILLIAM BERNARDEZ demands judgment against the Defendants MICHELIN NORTH AMERICA, INC f/k/a UNIROYAL TIRE COMPANY, INC or UNIROYAL GOODRICH TIRE COMPANY, INC, GENERAL MOTORS CORPORATION, MULLINAX FORD SOUTH, INC d/b/a MAROONE FORD OF MARGATE, SEARS, ROEBUCK & CO d/b/a SEARS AUTO CENTER, and ABC CORPORATION including damages to which the Plaintiff, in all of her capacities, is entitled to and any other relief which this Court may deem appropriate

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL CLAIMS

Dated this _____ day of _____, _____

William DeForest Thompson Jr
Florida Bar No 0735264
1422 Hendry Street, Suite 302
Ft Myers, Florida 33901